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# ELIZABETHAE II REGINAE

A.D. 1988

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No. 97 of 1988

**An Act to amend the Workers Rehabilitation and Compensation Act, 1986, and the Workers Rehabilitation and Compensation Act Amendment Act, 1988.**

*[Assented to 15 December 1988]*

The Parliament of South Australia enacts as follows:

## PART I PRELIMINARY

### Short title

1. This Act may be cited as the *Statutes Amendment (Workers Rehabilitation and Compensation) Act, 1988*.

### Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

## PART II AMENDMENTS TO THE WORKERS REHABILITATION AND COMPENSATION ACT, 1986

### Citation

3. The *Workers Rehabilitation and Compensation Act, 1986*, is in this Part referred to as "the principal Act".

### Exempt employers

4. Section 60 of the principal Act is amended—

(a) by striking out subsections (3) and (4) and substituting the following subsections:

(3) Where—

(a) an application is made under subsection (1);

and

(b) the Corporation is satisfied—

- (i) that the employer or the employers constituting the group have reached a standard that, in the opinion of the Corporation, must be achieved before conferral of exempt status can be considered;

and

- (ii) that in all the circumstances it is appropriate to do so,

the Corporation may register the employer or the group as an exempt employer or a group of exempt employers.

(4) In determining whether to register an employer or group of employers under this section the Corporation will have regard to such matters that the Corporation considers relevant, together with each of the following matters—

- (a) whether the employer or group is, and is likely to continue to be, able to meet its liabilities;
- (b) the resources that the employer or group has for the purpose of administering claims for compensation;
- (c) the incidence and severity of compensable disabilities arising from employment by the employer or the employers constituting the group;
- (d) the safety of the working conditions of workers employed by the employer or the employers constituting the group;
- (e) the record of the employer or the employers constituting the group in relation to the rehabilitation of disabled workers;
- (f) the record of the employer or the employers constituting the group in providing suitable employment to workers who suffer compensable disabilities;
- (g) the views of any registered association that has, in the opinion of the Corporation, a proper interest in the application.;

and

(b) by inserting after subsection (5) the following subsection:

(5a) Where application is made to the Corporation for the renewal of the registration of an employer or group of employers under this section, the Corporation cannot, in determining whether to grant the renewal, consider the effect that registration of the employer or group as an exempt employer or group of exempt employers has on the Compensation Fund.

### Preliminary

5. Section 65 of the principal Act is amended by inserting after subsection (2) the following subsections:

(3) For the purposes of this Division, two or more employers will, if the Corporation so determines, constitute a group if—

- (a) they are capable of being treated as members of a group under the *Payroll Tax Act, 1971*;

or

(b) they are related in some other way.

(4) Where two or more employers constitute a group, one of those employers, nominated by the Corporation after consultation with the members of the group, will be treated as the employer of all workers employed by the members of the group.

#### Application for review

6. Section 95 of the principal Act is amended by striking out paragraph (d) of subsection (2).

#### Amendment of first schedule

7. The first schedule to the principal Act is amended by striking out clause 4 and substituting the following clause:

##### Mining and Quarrying Industries Fund

4. (1) The scheme established under Part IX of the repealed Act continues in existence for the settlement of claims and other matters arising in relation to death or disablement from silicosis suffered before the appointed day with the following qualifications:

(a) the Corporation will be liable to satisfy any claim made under the scheme;  
and

(b) the money standing to the credit of the general compensation fund is to be transferred to the Corporation.

(2) The money received by the Corporation under subclause (1) must be paid into a special account entitled the *Mining and Quarrying Industries Fund*.

(3) The Mining and Quarrying Industries Fund is to be notionally divided into two parts (Part A and Part B), one part (Part A) to be available to the Corporation to satisfy its liabilities under subclause (1) and the balance (Part B) to be available to the Mining and Quarrying Occupational Health and Safety Committee established under the fourth schedule for the purposes referred to in that schedule.

(4) For the purposes of the division of the Mining and Quarrying Industries Fund into two parts—

(a) the Public Actuary must, as soon as practicable after the transfer of money to the Corporation under subclause (1), and thereafter at three yearly intervals, estimate the extent of the Corporation's existing and prospective liabilities under that subclause;

and

(b) (i) if it appears from any such estimate that the amount standing to the credit of Part A exceeds the amount required to satisfy the Corporation's liabilities under subclause (1), the amount of the excess must be transferred from Part A to Part B;

(ii) if it appears from any such estimate that the amount standing to the credit of Part A is less than the amount required to satisfy the Corporation's liabilities under subclause (1), the amount required to make up the deficiency must be transferred from Part B to Part A.

(5) The Corporation must keep separate accounting records for Parts A and B.

(6) Money standing to the credit of the Mining and Quarrying Industries Fund (and not immediately required for the purposes of the fund) may be invested as if it were part of the Compensation Fund.

(7) Income and accretions produced by the investment of the money must be shared between Parts A and B (the amount of the shares being determined according to the extent to which money held on each account has contributed to the amount invested).

(8) The Corporation may debit the Mining and Quarrying Industries Fund with—

(a) the reasonable costs of administering the fund;

and

(b) the reasonable costs of providing services, facilities and staff to the Mining and Quarrying Occupational Health and Safety Committee under the fourth schedule.

#### Insertion of new schedule

8. The following schedule is inserted after the third schedule to the principal Act:

#### FOURTH SCHEDULE

##### *The Mining and Quarrying Occupational Health and Safety Committee*

##### **The Committee**

1. (1) The Mining and Quarrying Occupational Health and Safety Committee ("the Committee") is established.
  - (2) The Committee will consist of seven persons appointed by the Minister, of whom—
    - (a) one (who will be the presiding member of the Committee) will be an officer of the Corporation working in the field of occupational health and safety nominated by the Corporation;
    - (b) one will be a person nominated by the South Australian Occupational Health and Safety Commission;
    - (c) one will be the Chief Inspector of Mines, or a person nominated by the Chief Inspector of Mines;
    - (d) two will be persons nominated by the South Australian Chamber of Mines and Energy to represent the interests of employers involved in the mining and quarrying industries;and
    - (e) two will be persons nominated by the United Trades and Labour Council to represent the interests of workers who work in the mining and quarrying industries.
  - (3) The Minister may appoint a deputy to a member of the Committee and the deputy may, in the absence or during a temporary vacancy in the office of that member, act as a member of the committee.
  - (4) A member of the Committee may be appointed for a term not exceeding three years determined by the Minister and will, on the expiration of a term of appointment, be eligible for reappointment.
  - (5) The Minister may, on reasonable grounds, remove a member of the Committee from office at any time.
  - (6) A member of the Committee may resign by written notice to the Minister.
  - (7) An act or proceeding of the Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
  - (8) Four members of the Committee constitute a quorum of the Committee.
  - (9) In the absence of the presiding member at a meeting of the Committee, the members present may decide who is to preside.
  - (10) A decision carried by at least four members of the Committee at a meeting of the Committee is a decision of the Committee.
  - (11) Each member present at a meeting of the Committee is entitled to one vote on any matter arising for decision at the meeting.
  - (12) The Committee must have accurate minutes kept of its proceedings at meetings.
  - (13) Subject to this schedule, the business of the Committee will be conducted in a manner determined by the Committee.
  - (14) A member of the Committee who has a direct or indirect pecuniary interest in a matter under consideration by the Committee—
    - (a) must disclose the nature of the interest to the Committee;and
    - (b) must not take part in any deliberation or decision of the Committee with respect to the matter.
- Penalty: \$2 000.
- (15) A disclosure under subclause (14) must be recorded in the minutes of the Committee.
  - (16) The Committee will, in connection with the performance of its functions, make use of the services, facilities and staff of the Corporation.

**Application of funds**

2. (1) Money available to the Committee from the Mining and Quarrying Industries Fund under the first schedule may be used for any of the following purposes:

- (a) to promote and support practices, procedures and arrangements designed to protect workers from silicosis;
- (b) to support education in the field of occupational health or safety in the mining and quarrying industries;
- (c) to initiate or support research and studies into occupational health or safety that could benefit workers in the mining and quarrying industries;
- (d) to promote and support persons or organizations working to prevent, alleviate or treat the kinds of disabilities suffered by workers in the mining and quarrying industries;
- (e) to support any other kind of activity that could directly or indirectly improve occupational health or safety in the mining and quarrying industries or assist in the rehabilitation of disabled workers in those industries.

(2) The Committee has all such powers as are reasonably necessary for the effective performance of its functions (including the power to establish sub-committees and to engage, as may be appropriate, experts or consultants to assist the Committee in the performance of its functions).

(3) The Committee must, in making grants of money under this schedule, give preference to supporting projects directed at improving occupational health or safety in those industries that involve exposure to silica dust and in particular to supporting specialized research and training projects directed at that purpose in South Australia.

(4) The Committee must not spend any part of the principal standing to the credit of Part B of the Mining and Quarrying Industries Fund without the specific approval of the Minister and in any case the Committee is not to spend in any financial year more than 20 per cent of the principal that, at the commencement of that financial year, is standing to the credit of that part of the fund.

(5) The Committee must after the end of each financial year prepare a report on its operations during that financial year.

(6) The report must be submitted to the Minister in conjunction with the annual report of the Corporation for the relevant financial year.

**PART III****AMENDMENTS TO THE WORKERS REHABILITATION AND COMPENSATION ACT  
AMENDMENT ACT, 1988****Citation**

9. The *Workers Rehabilitation and Compensation Act Amendment Act, 1988*, is in this Part referred to as "the principal Act".

**Insertion of ss. 58a and 58b**

10. Section 15 of the principal Act is amended by inserting after subsection (3) of new section 58b proposed to be inserted in the *Workers Rehabilitation and Compensation Act, 1986*, the following subsection:

(3a) Subsection (3) does not apply where—

- (a) the worker is neither receiving compensation nor participating in a rehabilitation programme in respect of the disability;

and

- (b) the worker has exhausted his or her rights to claim compensation under this Act in respect of the disability, or the time for making such a claim has expired.

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**Substitution of s. 18**

11. Section 18 of the principal Act is repealed and the following section is substituted:

**Preliminary**

18. Section 65 of the principal Act is amended by striking out subsection (2).

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor